

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

CLYDE GOULD,

Appellant,

v.

ZENITH PRODUCTS CORP.,

Appellee,

and

UNEMPLOYMENT INSURANCE

APPEAL BOARD,

Appellee.

C.A. No.: N09A-12-016 DCS

Submitted: June 29, 2010

Decided: August 24, 2010

Upon Appeal From a Decision and Order of the  
Unemployment Insurance Appeal Board.

**AFFIRMED.**

**OPINION**

Appearances:

Clyde Gould, *pro se* Appellant.

Kathleen T. McDonough, Esquire, and Sarah E. DiLuzio, Esquire, Wilmington, Delaware, Attorneys for Zenith Products Corporation.

Philip G. Johnson, Deputy Attorney General, Wilmington, Delaware, Attorney for Unemployment Insurance Appeal Board.

**STREETT**, Judge.

Clyde Gould (“Gould”) has appealed a decision of the Unemployment Insurance Appeals Board (“the Board”) of the State of Delaware, wherein the Board affirmed the decision of the Appeals Referee that Gould was discharged from his employment for “just cause,” and is therefore disqualified from receiving benefits pursuant to 19 *Del. C.* § 3314(2).<sup>1</sup> Upon review of Gould’s Opening Brief and the Record on appeal, this Court AFFIRMS the decision of the Board.

### **PROCEDURAL HISTORY**

Gould was hired by Zenith Products Corporation (“Zenith”) on August 21, 2002, and was terminated on August 11, 2009. Gould filed a claim for unemployment insurance benefits with the Department of Labor effective August 15, 2009. On September 2, 2009, the Claims Deputy found that Gould was terminated for “just cause,” and was therefore disqualified from receiving benefits.

On September 8, 2009, Gould appealed the foregoing decision to the Claims Referee.<sup>2</sup> After considering evidence presented at a hearing held on October 6, 2009, the Referee determined that Gould was discharged for just cause and affirmed the decision of the Claims Deputy.<sup>3</sup>

---

<sup>1</sup> 19 *Del. C.* § 3314(2) states, in relevant part:

An individual shall be disqualified for benefits:

...  
(2) for the week in which the individual was discharged from the individual’s work for just cause in connection with the individual’s work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount.

<sup>2</sup> Record at 27.

<sup>3</sup> *Id.*, at 29.

Gould appealed the Referee's decision to the Unemployment Insurance Appeal Board.<sup>4</sup> Following a hearing on December 9, 2009, the Board adopted the Referee's findings of fact and affirmed the Referee's decision denying benefits.<sup>5</sup> Gould filed this instant appeal on December 28, 2009.<sup>6</sup>

### **FACTUAL BACKGROUND**

Gould was employed by Zenith from August 21, 2002 through August 11, 2009 as a shipping lead.<sup>7</sup> His last day of work was July 31, 2009.<sup>8</sup> Gould was terminated as a result of two occurrences.<sup>9</sup>

The first incident occurred on April 15, 2009, when it was reported that Gould was insubordinate toward his supervisor.<sup>10</sup> On that day, Gould was missing from the floor for twenty minutes, during "an extremely busy day [where] there were first shift employees working overtime."<sup>11</sup> When questioned by his supervisor regarding his absence, Gould indicated that he was taking a smoke break.<sup>12</sup> When the supervisor threatened to take away Gould's smoke break privileges, Gould responded "I don't give a shit."<sup>13</sup> As a result of his use of foul language, on April 24, 2009 Gould received a Disciplinary Action form for

---

<sup>4</sup> *Id.*, at 90.

<sup>5</sup> *Id.*, at 93.

<sup>6</sup> *Id.*, at 112.

<sup>7</sup> *Id.*, at 31.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*, at 30.

<sup>10</sup> *Id.*, at 11.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

Conduct, indicated to be a “Final Warning.”<sup>14</sup> Gould also received a “First Written Warning” Disciplinary Action form for Work Performance because he was missing from the floor for twenty minutes.<sup>15</sup>

This termination stemmed from an incident occurring on July 29, 2009, where Gould complained to Zenith’s Human Resources staff because he was not permitted to receive his vacation pay in advance.<sup>16</sup> The Human Resources Coordinator explained to Gould that due to company policy effective on July 1, 2008,<sup>17</sup> only employees “in good standing” were permitted to request advance vacation payment.<sup>18</sup> Therefore, because Gould’s file indicated he had recently been reprimanded for his conduct and work performance, he was ineligible to receive vacation advance pay.<sup>19</sup> Gould admitted that he may have used foul language during his July 29, 2009 conversation with the Human Resources Coordinator.<sup>20</sup> Gould then went on vacation on July 31, 2009.<sup>21</sup> Despite his previous conversation with the Human Resources Coordinator, he called another employee in the Human Resources office on August 6, 2009 and told that Human Resources Coordinator that he was nonetheless entitled to receive advance

---

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, at 39.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*, at 35.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*, at 8.

<sup>20</sup> *Id.*, at 31.

<sup>21</sup>

vacation pay, and asked why he had not yet received it.<sup>22</sup> When another Human Resources staff member reiterated that he was ineligible, Gould became upset and hung up the telephone.<sup>23</sup>

Upon investigation of this incident, the Zenith management determined that Gould's conduct and foul language were unprofessional and unbecoming of a lead, an offense for which he had previously been warned.<sup>24</sup> As a result, Gould was terminated for using foul language and unbecoming conduct.<sup>25</sup>

Gould's testimony was essentially consistent with the above circumstances, and during his hearing with the Claims Referee, Gould admitted to using foul language with the Human Resources staff because he was upset at the time.<sup>26</sup> Zenith provided documentation and testimony that Gould was aware of company policy regarding the use of foul language, especially when speaking with supervisors.<sup>27</sup>

### **ISSUES ON APPEAL**

The brief submitted by Gould in support of his appeal cites no errors of law or fact, nor does it identify any instances where the Board abused its discretion. The essence of Gould's claim is that he was "set up" by the other Zenith employees and that it seemed to him that the Referee "was not letting [Gould] get

---

<sup>22</sup> *Id.*, at 8.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*, at 75.

<sup>27</sup> *Id.* at 93.

to any important points or questions that [Gould] needed to ask in order to help [himself].”<sup>28</sup>

Neither Zenith nor the Board filed Answering Briefs in this matter. Counsel for the Board submitted a letter informing the Court that the Board does not intend to take a position on the merits.<sup>29</sup>

### STANDARD OF REVIEW

The Superior Court has jurisdiction to review a decision of the Board on appeal pursuant to the Delaware *Administrative Procedures Act*.<sup>30</sup> The duty of the reviewing Court is to examine the record of the proceedings below to determine if (1) there is substantial evidence to support the Board’s findings and conclusions and (2) the Board’s decision is free from legal error.<sup>31</sup> In making its assessment, the Court is not authorized to make its own factual findings, assess credibility of witnesses or weigh the evidence.<sup>32</sup> Substantial evidence is greater than a scintilla and less than a preponderance.<sup>33</sup> If the Board’s findings and conclusions are found to be based upon such evidence and there is no error of law, the Board’s decision must be affirmed.<sup>34</sup>

---

<sup>28</sup> Gould Opening Brief, at \*2.

<sup>29</sup> Board Deputy Attorney General Letter dated July 6, 2010, at \*1.

<sup>30</sup> 24 Del. C. §1736(b) and 29 Del. C. §10142.

<sup>31</sup> *Mooney v. Benson Mgmt. Co.*, 451 A.2d 839, 840 (Del. Super. 1982) (citing 29 Del. C. §10142; *Air Mod Corp. v. Newton*, 215 A.2d 434, 438 (Del. 1965)).

<sup>32</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

<sup>33</sup> *Olney v. Cooch*, 425 A.2d 610 (Del. 1981).

<sup>34</sup> *Mooney*, 451 A.2d at 840(citing 29 Del. C. § 10142; *Air Mod Corp.*, 215 A.2d at 438).

## DISCUSSION

“Just cause” has been consistently defined by Delaware Courts as a “willful or wanton act in violation of either the employer’s interests, or of the employee’s duties, or of the employer’s expected standard of conduct.”<sup>35</sup> To establish that the acts in question were “willful or wanton” requires a showing that the employee was conscious of his conduct and acted in reckless disregard of the consequences of that conduct.<sup>36</sup>

The issues raised by Gould on appeal, specifically that he was “set up” by his coworkers and that he was “very sure [he] didn’t use foul words,”<sup>37</sup> are without factual or legal support. The record is undisputed that Gould used (or may have used) foul language.

The Claims Deputy, the Appeals Referee, and the Board all found that Gould was discharged for “just cause.” The Court affirms these findings, because the facts and testimony on the record support the determinations and provide substantial evidence to support the Board’s decision to deny benefits.

The Court finds that Gould’s conduct on July 29, 2009 and August 6, 2009, especially in light of his previous infractions concerning his use of foul language in

---

<sup>35</sup> *Reeves v. Conmac Security*, 2006 WL 496136, at \*4 (Del. Super. 2006) (quoting *Avon Products, Inc. v. Wilson*, 513 A.2d 1315, 1317 (Del. 1987); *Starkey v. Unemployment Ins. Appeal Bd.*, 340 A.2d 165, 167 (Del. Super. 1975); *Abex Corp. v. Todd*, 317 A.2d 100 (1974)).

<sup>36</sup> *Reeves*, 2006 WL 496136, at \*4 (citing *Coleman v. Dept. of Labor*, 288 A.2d 285, 288 (Del. Super. 1972)).

<sup>37</sup> Gould Opening Brief at \*1, 2.

the work place, insubordination, and conduct unbecoming a lead, constituted “just cause” for his termination by Zenith.

Gould was aware of the work rules that prohibited the use of profanity in the work place. He was counseled and issued two written warnings for his insubordination on April 15, 2009 when he was missing from the floor for twenty minutes during a busy work period and then used profanity when speaking with his supervisor about the incident. When Gould received these warnings, he was informed that any subsequent conduct-related infractions could result in his termination.

Gould admitted he was upset on July 29, 2009 when he was informed that he was not permitted to receive advance vacation pay because he was not an employee in “good standing” due to his previous disciplinary warnings. Despite the fact that these rules were provided in writing to Gould, he was nonetheless argumentative with Human Resources staff and admittedly used foul language. When he called again on August 6, 2009, his demeanor remained unchanged and he was again disrespectful towards the Human Resources staff members when they attempted to explain to him why he was ineligible to receive advance vacation pay.

Thus, the August 6, 2009 incident when Gould was argumentative and hung up on the Human Resources staff member was not an isolated incident. Gould had been warned about his conduct and use of profanity on prior occasions, and his



reprimands stemming from those prior incidents expressly counseled Gould that he must “conduct himself at all times in a manner that does not conflict with the requirements of a Lead or any policies of Zenith Products.”<sup>38</sup> Effectively, he was on notice that this type of behavior was not to be tolerated by Zenith and was put on notice that further instances of disrespect or conduct unbecoming a lead could result in termination of his employment. Gould’s behavior, after Zenith refused to advance him vacation pay, must be viewed within the context of his prior history of using foul language and insubordination.

The Court finds that Gould’s acts rose to the level of willful or wanton conduct providing Zenith just cause to terminate him. Gould, as a lead, was required to abide by certain behavioral standards in the workplace. Gould was also on notice that any repeat behavior, *i.e.*, using profanity and showing disrespect toward coworkers, may lead to his discharge. Having been formally warned, he was on notice of the consequences of his actions. His repeat conduct provided sufficient just cause for his termination. Furthermore, the record is devoid of any evidence that he was “set up.”

In assessing the evidence presented, the Board considered factual evidence and performed its function in “reconciling inconsistent testimony and determining

---

<sup>38</sup> Record at 11.

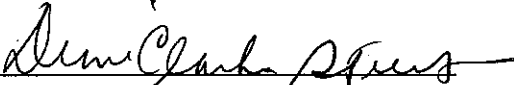
the credibility of witnesses.”<sup>39</sup> It is not the function of this Court to weigh evidence, make its own factual findings, or determine credibility of witnesses on appeal. In accordance with the Board’s findings, this Court holds that the evidence is legally sufficient to support the Board’s factual finding that Gould was terminated for “just cause.” Absent a showing of legal error on the part of the Board, the reviewing Court must affirm the Board’s decision on appeal. Because the record does not indicate any errors of law on the part of the Board, this Court will not challenge its findings.

Accordingly, this Court finds that the decision of the Unemployment Insurance Appeal Board, finding that Gould was terminated for “just cause” and denying unemployment compensation benefits pursuant to 19 *Del. C.* § 3314(2), is based upon substantial evidence and contains no legal error.

### CONCLUSION

For the foregoing reasons, the decision of the Unemployment Insurance Appeal Board is hereby AFFIRMED.

**It is So ORDERED.**

  
Diane Clarke Streett  
Judge

DCS/mja  
Original to Prothonotary

---

<sup>39</sup> *Reeves*, 2006 WL 496136 at \*5.